

ROBERT F. THOMPSON

IBLA 82-1232

Decided October 26, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void, CA MC 54733 and CA MC 54734.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

APPEARANCES: Robert F. Thompson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert F. Thompson appeals the July 19, 1982, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Arrastra #1 and #5 lode mining claims, CA MC 54733 and CA MC 54734, abandoned and void because the evidence of the annual assessment work had not been filed on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The evidence of assessment work was received January 4, 1982.

Appellant states he mailed the proof of labor before the due date, with expectation that it would reach BLM by December 30, and attributes the delay until January 4 to the Christmas mail.

[1] Although the document may have been mailed on or prior to December 30, 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the envelope was delayed by the Postal Service, that fact would not excuse appellant's failure to comply with the stated regulations. Wade McNeil, 66 IBLA 228 (1982); Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of untimely delivery of his filings. Don Chris A. Coyne, 52 IBLA 1 (1981); Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.22(f). The Board has no authority to excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Gail F. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

